

Attorney Docket No. 9399-3

In re: Klein et al.

Application No.: 10/792,339

Filed: March 3, 2004

Page 6

REMARKS

Applicants appreciate the detailed examination of the present application as evidenced by the non-final Office Action dated September 17, 2007 (hereinafter, the "Office Action"). Upon entry of this Amendment, Claims 7-22 are pending in the present application, and Applicants respectfully submit that these claims are patentable for at least the reasons discussed herein.

Claim Rejection Under 35 U.S.C. §112 (Indefiniteness). The Office Action asserts that Claim 22 stands rejected as being indefinite in view of the recitation "said strain" for which the Office Action asserts there is insufficient antecedent basis for this recitation. *See* Office Action, page 2. Applicants have amended Claims 21 and 22 to recite "said compound." The recitation of "said strain" was a clerical error, which has now been corrected. The recitation "said compound" is clearly supported by the specification as originally filed. Accordingly, Applicants respectfully submit that this rejection has been overcome, and Applicants respectfully request withdrawal of the indefiniteness rejection.

Claim Rejections Under 35 U.S.C. § 101 (Double Patenting). The Office Action asserts that Claims 1-6 stand rejected under a double patenting rejection as claiming the same invention as that of Claims 13-17 and 23 of U.S. Patent No. 7,220,761 to Klein et al. (hereinafter, "the '761 patent) (Attorney Docket No. 9339-6). *See* Office Action page 3. Applicants have canceled Claims 1-6 herein and placed Claim 7 in independent format in an effort to expedite allowance of the present application. Accordingly, Applicants respectfully submit that this rejection has been overcome, and Applicants respectfully request withdrawal of the double patenting rejection.

Nonstatutory-type Double Patenting Rejections. Claims 7, 8 and 11-14 stand rejected on the basis of nonstatutory obviousness-type double patenting over Claims 4, 5, 24, 28 and 29 of the '761 patent. *See* Office Action, page 3. Claims 1 and 4-7 stand provisionally rejected on the basis of nonstatutory obviousness-type double patenting as being unpatentable over Claims 6, 7, 9, 10, 16, 17, 19-22, 24 and 25 of co-pending U.S. Patent Application Serial No. 10/792,465 to Selph et al. (Attorney Docket No. 9339-4). *See* Office Action, page 4. Claims 1-4 stand provisionally rejected on the basis of nonstatutory obviousness-type double

Attorney Docket No. 9399-3

In re: Klein et al.

Application No.: 10/792,339

Filed: March 3, 2004

Page 7

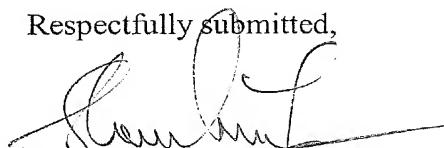
patenting as being unpatentable over Claims 27, 29, 31, 32, 34-36, 38, 39, 45, 47 and 48 of co-pending U.S. Patent Application Serial No. 11/745,111 to Klein et al. (Attorney Docket No. 9399-6DV) in view of U.S. Patent Application Publication No. 2002/0044962 to Cherukuri et al. *See* Office Action, page 5. Lastly, Claims 9, 10 and 15-22 stand rejected on the basis of nonstatutory obviousness-type double patenting as being unpatentable over Claims 13-19, 23 and 24 of the '761 patent in view of U.S. Patent No. 4,105,793 to Gross. *See* Office Action, page 5.

Terminal disclaimers are submitted concurrently herewith to obviate the nonstatutory obviousness-type double patenting rejections. Applicants note that the submission of these terminal disclaimers in no way represents an acquiescence to the outstanding rejections or an acknowledgement that the subject matter of the pending claims is obvious over the cited claims of the cited patents, patent applications and/or combinations thereof. Accordingly, Applicants respectfully submit that the filing of these terminal disclaimers has obviated the outstanding obviousness-type double-patenting rejections, and Applicants respectfully request withdrawal of the nonstatutory obviousness-type double patenting rejections at least on this basis.

Conclusion

In view of the foregoing amendments and remarks, Applicants respectfully request that all outstanding rejections to the claims be withdrawn and that a Notice of Allowance be issued in due course. The Examiner is invited and encouraged to contact the undersigned directly if such contact will expedite the prosecution of the pending claims to issue. In any event, any questions that the Examiner may have should be directed to the undersigned, who may be reached at (919) 854-1400.

Respectfully submitted,



Shawna Cannon Lemon
Registration No. 53,888

Attorney Docket No. 9399-3

In re: Klein et al.

Application No.: 10/792,339

Filed: March 3, 2004

Page 8

USPTO Customer No. 20792

Myers Bigel Sibley & Sajovec, P.A.

P. O. Box 37428, Raleigh, NC 27627

Telephone: (919) 854-1400

Facsimile: (919) 854-1401

CERTIFICATION OF TRANSMISSION

I hereby certify that this correspondence is being transmitted via the Office electronic filing system in accordance with § 1.6(a)(4) to the U.S. Patent and Trademark Office on October 29, 2007.

Laneisha C. Hayes
Laneisha C. Hayes
Date of Signature: October 29, 2007